

REMARKS/ARGUMENTS

**Claim Status**

Claims 5, 6, 8, 9 and 11-24 are pending. Claims 1-4, 7 and 10 were previously canceled without prejudice. Claims 23 and 24 are added and find support in [0040] and [0041] of the specification as originally filed. No new matter is believed to have been entered.

**§103(a) Rejections**

Claims 5, 6, 8, 9, 11-14 and 17-22 have been rejected under 35 U.S.C. §103(a) as obvious in view of *Hinz* (US 5,785,962) and *Fath* (GB 2321595). Claims 15 and 16 have been rejected under 35 U.S.C. §103(a) as obvious in view of *Hinz*, *Fath* and *Doi* (US 6,923,954). Applicants respectfully traverse these rejections.

The claimed invention relates to a method of treating hair to improve hair elasticity and suppleness, as well as to reduce the signs of bending from, for example, hair braiding. This treatment is effected with the use of two hair cosmetic compositions A and B. Composition A comprises (a) a polycarboxylic acid (or salt thereof) and (c) at least one organic solvent (selected from aromatic alcohols, alkylene carbonates, and polyols). Composition B comprises (b) a hydroxymonocarboxylic acid (or salt thereof) and (c) at least one organic solvent (selected from aromatic alcohols, alkylene carbonates, and polyols).

In contrast, *Hinz* discloses a hair shampoo composition providing improved comb-ability, volume and luster (Abstract) and *Fath* discloses a hair conditioning composition providing improved gloss, comb-ability and softness (Abstract). Neither *Hinz* nor *Fath* discloses improved reduction in signs of bending as obtained by Applicants claimed method. Accordingly, one skilled in the art would not have expected the use of the compositions of

*Hinz* and *Fath* in combination to yield superior reduction in signs of bending of treated hair as obtained by Applicants' claimed method.

Accordingly, the Office (i) has failed to provide motivation for one skilled in the art to select the specific shampoo of *Hinz* out of thousands of known shampoos and combine it with the specific conditioner of *Fath* out of thousands of known conditioners, and (ii) has failed to provide a rationale basis or evidence of how one skilled in the art would "reasonably conclude" (Office Action, pages 2-3) that the combination of (a) a volumizing, luster-improving and combability-improving shampoo with (b) a glossifying, softening and combability-improving conditioner, would render obvious a hair treatment that improves the reduction in signs of bending.

Opposite to the Office's allegations, Applicants submit that one skilled in the art (i) would have no reason/motivation to select and combine these two particular hair products (i.e., the specific shampoo of *Hinz* with the specific conditioner of *Fath*), and (ii) even if one were to select and combine these two products by mere chance, one would not expect that the result of the combined use would reduce the signs of bending of treated hair.

As evidence of the non-obvious reduction in the signs of bending of treated hair obtained by Applicants' claimed method, Applicants previously pointed out Examples 10 and 11 as well as Comparative Examples 10 and 11 of Tables 3-5 (specification pages 27-29) (response filed December 18, 2008, pages 7-8; and response filed August 18, 2009, pages 4-5).

During the interview with Examiner Holloman on May 21, 2009, Applicants' representative elaborated on the features and significance of these examples as follows.

Example 11 and Comparative Example 11 (the shampoo of which is described in Table 3 and the conditioner of which is described in Table 4) show the difference between a hair treatment method as claimed (Example 11) and a hair treatment as disclosed by *Hinz*

(Comparative Example 11). The hair treatment method as claimed (Example 11) uses a shampoo (Table 3) within the claimed parameters along with a conditioner (Table 4) within the claimed parameters. In contrast, the hair treatment as disclosed by *Hinz* (Comparative Example 11) uses a shampoo (Table 3) within the claimed parameters and within the disclosure of *Hinz* along with a “generic/off-the-shelf” conditioner (Table 4) outside the claimed parameters.

Upon reviewing the data of Example 11 and Comparative Example 11 (Tables 3 and 4 of the original specification - pages 27-28), one can see that Example 11 shows a superior % recovery from the signs of bending just after treatment (79 versus 71) and one hour after treatment (97 versus 92) as compared to Comparative Example 11. These differences in % recovery equate to an increase in recovery of 8% and 5% respectively.

In addition, Example 10 and Comparative Example 10 (the shampoo of which is described in Table 3 and the conditioner of which is described in Table 4) show the difference between a hair treatment method as claimed (Example 10) and a hair treatment as disclosed by *Fath* (Comparative Example 10). The hair treatment method as claimed (Example 10) uses a shampoo (Table 3) within the claimed parameters along with a conditioner (Table 4) within the claimed parameters. In contrast, the hair treatment as disclosed by *Fath* (Comparative Example 10) uses a “generic/off-the-shelf” shampoo (Table 3) outside the claimed parameters along with a conditioner (Table 4) within the claimed parameters and within the disclosure of *Fath*.

Upon reviewing the data of Example 10 and Comparative Example 10 (Tables 3 and 4 of the original specification - pages 27-28), one can see that Example 10 shows a superior % recovery from the signs of bending just after treatment (83 versus 61) and one hour after treatment (97 versus 87) as compared to Comparative Example 10. These differences in % recovery equate to an increase in recovery of 22% and 10% respectively.

Despite the above explanations regarding Examples 10-11 and Comparative Examples 10-11, the Office asserts the following in the Advisory Action dated September 24, 2009:

“Ex. 3 appears to be the same shampoo as that of Example 11 and comparative Example 11 ... the results for ex. 3 for the recovery from signs by bending just after treatment is 80% and one hour after treatment is 97%, which appears to be similar to Example 11 (79 and 97 respectively) and therefore does not support Applicant’s claim of unexpected results. Similar results are seen for ex. 6 which appears to be the conditioner of Example 10 and Comparative Example 10 and that of Fath, wherein the recovery from signs by bending just after treatment is 82% and one hour after treatment is 97% is similar to Example 10 (83% and 97% respectively)”

Applicants submit that these asserts by the Office regarding Examples 3 and 6 are incorrect!

The shampoo of Example 3 (Table 1) differs from the shampoos of Example 11 and Comparative Example 11 (Table 3) in that Example 3 contains 0.75 wt% each of both lactic acid and malic acid, whereas Example 11 and Comparative Example 11 contain 0.75 wt% of only malic acid (i.e., 0 wt% of lactic acid). Similarly, the conditioner of Example 6 (Table 2) differs from the conditioners of Example 10 and Comparative Example 10 (Table 4) in that Example 6 contains 1.00 wt% lactic acid, 1.20 wt% glycolic acid and 0.80 wt% malic acid, whereas Example 10 and Comparative Example 10 contain only 1.00 wt% lactic acid and 1.20 wt% glycolic acid (i.e., 0 wt% malic acid). **Accordingly, the Office’s conclusion that Examples 10-11 and Comparative Examples 10-11 “do not support Applicant’s claim of unexpected results” is completely unfounded.**

Furthermore, during the interview of May 21<sup>st</sup> the Examiners inquired about the resulting recovery from the signs of bending of treated hair that would be obtained from the use of *Hinz*’s shampoo alone and from the use of *Fath*’s conditioner alone. In response, Applicants point out Example 4 and Comparative Examples 4a and 4b as reproduced below from Table 1 of the original specification (page 22).

Raw material	Ex. 4	Comp Ex 4a	Comp Ex 4b
Sodium polyoxyethylene lauryl ether sulfate	10.00	10.00	10.00
Sodium lauryl sulfate	5.00	5.00	5.00
Laurel amidopropylbetaine	2.50	2.50	2.50
Polyoxyethylene lauryl ether (16 E.O.)	2.00	2.00	2.00
Coconut fatty acid monoethanolamide	0.50	0.50	0.50
Myristyl alcohol	1.00	1.00	1.00
Highly polymerized Methylpolysiloxane emulsion	-	-	-
Pearl concentrate	8.00	8.00	8.00
(c): PPG400	1.00	1.00	1.00
(c): Benzyl alcohol	-	-	-
(c): Benzylalcohol	0.50	0.50	0.50
(c): Phenoxyethanol	-	-	-
Phosphonic acid	-	q.s.	q.s.
(b): Lactic acid	0.30	-	0.30
(b): Glycolic acid	0.50	-	0.50
(a): Citric acid	0.20	0.20	-
(a): Malic acid	0.80	0.80	-
Cationic cellulose	0.50	0.50	0.50
Cationic guar gum	-	-	-
Dimethyldialkylammonium chloride / acrylamide copolymer	0.10	0.10	0.10
Sodium chloride	0.20	0.20	0.20
Sodium hydroxide	q.s.	q.s.	q.s.
Perfume	0.50	0.50	0.50
Purified water	balance	balance	balance
pH (diluted to 20 times the weight with water, 25°C)	3.7	3.7	3.7
$((a)+(b))/(c)$	1.2	0.67	0.53
Recovery (%) from signs formed by Bending	Just after One hour after	68 90	62 88

As shown above, Comparative Example 4a (Table 1) is like *Hinz's* shampoo composition with respect to comprising two of three components: (a) polycarboxylic acids and (c) organic solvents but not (b) hydroxymonocarboxylic acids; and Comparative Example 4b (Table 1) is like *Fath's* conditioner composition in that it comprises two of three components: (b) hydroxymonocarboxylic acids and (c) organic solvents but not (a) polycarboxylic acids. Consequently, the shampoo alone like *Hinz* (Comparative Example 4a) results in a % recovery from the signs of bending of only 68 (just after treatment) and 90 (1 hour after treatment), and the conditioner alone like *Fath* (Comparative Example 4b) results in a % recovery from the signs of bending of only 62 (just after treatment) and 88 (1 hour after treatment).

In contrast, the use of all three components (a) a polycarboxylic acid, (b) a hydroxymonocarboxylic acid, and (c) an organic solvent (Example 4) as claimed, results in a

superior % recovery from the signs of bending of 79 (versus 62 and 68) (just after treatment) and 97 (versus 88 and 90) (1 hour after treatment).

Accordingly, Applicants again request that the above excerpted evidence of the non-obvious reduction in the signs of bending of treated hair obtained by Applicants' claimed method, as well as the numerous other examples included in Tables 1-4, be considered with respect to the non-obviousness of the claimed invention in view of *Hinz* and *Fath*.

Lastly, during the interview the Examiners inquired about (i) any potential necessity for composition A to be applied to the hair before composition B, and (ii) scope of the entirety of the data presented in the original specification, namely Examples 1-15 and Comparative Examples 1-3, 4a, 4b, 5-7, 8a, 8b, and 9-15 of Tables 1-4. With respect to (i), Applicants point out that the claimed hair treatment method does not necessarily require application of composition A before composition B (see claim 5, "in any order"); however, it is preferred to apply A before B (see claim 22). Concerning (ii), Applicants note that the statements with respect to and including the data in the original specification must be treated as objectively true, unless the examiner has reasons, based on sound scientific principles, to doubt the objective truth of applicants' specification.

The burden is on the Patent Office to provide reasons based on scientific principles, to doubt the objective enablement of Applicant's claimed invention. Applicant's disclosure **must be taken as in compliance** with the enabling requirement under 35 USC 112, first paragraph, **unless, there is reason to doubt the objective truth of the statements contained therein.** (*In re Marzocchi*, 439 F.2d 220, 224, 169 USPQ 367, 370 (CCPA 1971)) M.P.E.P. §§2163.04.

The examiner has provided no basis to doubt the objective truth of applicants disclosure and demonstration such that the claimed demonstration is believed to be commensurate in scope with the claimed invention.

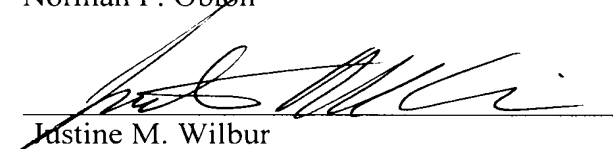
In view of the foregoing, Applicants again submit that *Hinz* and *Fath* do not render obvious Applicants' claims. Accordingly, Applicants respectfully request the withdrawal of this rejection.

**Conclusion**

For the reasons discussed above, Applicants submit that all now-pending claims are in condition for allowance. Applicants respectfully request the withdrawal of the rejections and passage of this case to issue.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read 'Justine M. Wilbur', is written over a horizontal line.

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